

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NATIONWIDE LIFE INSURANCE
COMPANY OF AMERICA,

Plaintiff,

-against-

ROBERT RAWISZER,
DAVID RAWISZER,

Defendants.

Civil Action No. 08 CV 0587 (DLC) (DCF)

REPLY TO COUNTERCLAIM

Plaintiff-Counterclaim Defendant Nationwide Life Insurance Company of America (“Nationwide”), by its attorneys Gibbons P.C., for its Reply to the Counterclaim states as follows¹:

1. Denies the allegations contained in paragraph 48 of the Answer, Affirmative Defense and Counterclaim.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Counterclaim fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The Counterclaim is barred because Nationwide has performed under the terms of the Special Agent’s Agreement.

¹ The defined terms of the Complaint dated January 23, 2008 are incorporated herein by reference.

THIRD DEFENSE

Defendants-Counterclaim Plaintiffs David and Robert Rawiszer's ("Defendants-Counterclaim Plaintiffs") claims are barred because Defendants-Counterclaim Plaintiffs have not suffered any damages or injury as a result of the alleged actions or inactions of Nationwide.

FOURTH DEFENSE

Defendants-Counterclaim Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, estoppel and acquiescence.

FIFTH DEFENSE

Defendants-Counterclaim Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

SIXTH DEFENSE

The damages or injury, if any, alleged to have been sustained by defendant were caused, in whole or part, by the culpable conduct of defendant.

Dated: New York, New York
March 24, 2008

GIBBONS P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2008, the foregoing REPLY TO COUNTERCLAIM was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants:

Barry T. Bassis, Esq.
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s/ Paul A. Saso _____